

**“Towards a Common European Asylum System”
Seminar, 29 November 2019
Paris, European Parliament Liaison Office**

Introduction

On 29 November, Confrontations Europe organised a seminar gathering numerous participants, notably high-ranking French civil servants from the Interior Ministry and from OFPRA (French Office for the Protection of Refugees and Stateless Persons), embassy advisors, but also members of associations and NGOs such as Amnesty International, JRS, researchers...

The main aim of this debate was to propose an issue to the endless project of the reform of the Dublin Regulation and, more broadly, to come back to the “Asylum Package”, a document including seven proposals which have been blocked for three years at the Council of the European Union in Brussels. Five proposals are nevertheless close to completion, but nothing has been finalised due to the insistence of some member states to consider that the package should be adopted together.

Confrontations Europe gathered the following speakers around the table:

- **Kukka Krüger**, a Finnish civil servant working for the Interior Ministry in Helsinki, who has been involved in the Dublin Regulation since 2003 and who has been one of the experts appointed at the Council of the EU during the Bulgarian and the Finnish presidency;
- **Jamil Addou**, Principal Head of Department at EASO (European Asylum Support Office), who offered a deep expertise on an issue he has daily followed, having as well been appointed for one year as the acting Executive Director of the EU Asylum agency based in Malta.
- Raphaël Glucksmann, MEP (Group of the Progressive Alliance of Socialists and Democrats) since May 2019, added a political voice to the debate.

What is at stake

Since 2016, discussions have been tense at the EU Council¹. The proposals of the European Commission, and of the European Parliament through the LIBE committee, were not voted since divisions remained deep not only between Western European countries and Visegrad countries, but also between the EU first-entry countries (Italy, Greece, Spain, a list to which we could also add Cyprus and Malta) and the other EU countries. The EU seeks to find a right

¹ <http://confrontations.org/efrachonconfrontations-org/migrations-solidarite-sous-tensions/>

balance between “solidarity” and “responsibility”, to use the two terms that the former President of the Commission, Jean-Claude Juncker, defined as a priority to resolve the asylum issue. At the end of the Juncker Commission, the migration issue has not been solved and not even debated as the EU Council deliberately chose, in March 2019, to not put the migration issue on the agenda, as the situation remained so divisive between the member states.

In this context, the Finnish Presidency, which has chosen to put the migration issue on top of its priorities, had an essential but difficult role to play and managed it very well, even if its action has been slowed down due to the political context (the European elections in May led to a suspension of the discussions, and the debates on the chosen Commissioners have also delayed the effective work of Ursula von der Leyen’s Commission).

Finland has chosen to adopt a more predictable approach, based on cooperation and viability. The starting point of such an approach is based on the assumption that no well-balanced asylum system can be found without a functional Schengen area based on free movement.

Among the seven legislative proposals under discussion, a consensus has been found on five of them:

- the reinforcement of the Eurodac regulation to improve the EU fingerprint database for asylum seekers;
- the establishment of a fully-fledged EU asylum agency;
- the replacement of the Qualification Directive with a regulation to harmonise protection standards and rights for asylum seekers;
- the reform of the Reception Conditions Directive to ensure that asylum seekers benefit from harmonised and dignified reception standards;
- and, last but not least, the creation of a permanent EU resettlement framework.

These elements, which are about to be voted, have not been part of our debate.

What remains on debate: the reform of the Dublin Regulation and the asylum procedures

At the EU Council, the discussions are stalled on the reform of the Dublin system which requires asylum seekers who travel from a non-EU Member State to an EU Member State to apply for protection in the country of first entry. This system is today commonly denounced as absurd and inefficient, but no solution has yet been found in order to replace or reform it. The Dublin III Regulation has been designed at first to better allocate asylum applications among member states and to guarantee the timely processing of applications but, in reality, it has created a nightmarish system in which asylum seekers are stuck in a country in which, often, they do not wish to stay and which is not capable or willing to examine quickly their dossier. They thus remain irregular for a long time if they choose to reach another EU

member state. The current Dublin system is not working properly and leads to a large number of “secondary movements”². In some countries, Dublin procedures form a considerable share of the asylum applications which leads to heavy workload and requires additional resources. This prevents the EU countries from sticking to the deadlines indicated in the Dublin Regulation and, at the same time, the transfers are inefficient as many asylum seekers abscond before being transferred (just about a quarter of the accepted Dublin requests result in transfers).

Another sticking point is the Asylum Procedures Directive, whose aim is to harmonise, through legislation, EU procedures and to reduce differences in recognition rates among member states. In reality, the interpretation of law varies across EU countries and many asylum seekers whose claim has been rejected in one member state move to a second, or even a third country to apply for asylum. The need of harmonising the procedures is crucial.

This blockage on the asylum issue is the symbol of the failure of “intergovernmentalism”. Negotiations seem impossible and a consensus unreachable at the EU Council: even if the proposals are made by the European Commission and the European Parliament, the texts are blocked by the Council. The EU Council appears as the deadlock point. How to solve such a blockage? This could happen if concrete solutions appear thanks to the debates around the Conference on the future of Europe, according to MEP Raphaël Glucksmann.

In order to reach a consensus, the Finnish presidency has adopted a very modern and constructive approach. Its will has been to take some distance from the legislative proposals and to try to understand better the national systems through small informal exchanges organised in working groups. Three relevant topics have emerged:

- First, the procedures at the border (and such an approach is then requested in the German proposal presented by the Interior Minister, Horst Seehofer, at the so-called G6-Group in October);
- The second important point is based on when the accelerated procedures can be chosen and when the normal ones should be;
- The third point stresses on the link which has to be established between the asylum procedures and the return policies.

In practice, what does that mean? Setting up solidarity measures is mandatory in order to prevent a single member state from bearing a disproportionate responsibility. This could be done through a sustainable solidarity mechanism as envisaged in the Dublin IV proposals, which will also allow more permanent support to disembarkations and voluntary relocations.

The EASO, created in 2011, was meant to be an expertise centre but, since the so-called “refugee crisis” in 2015, its role has evolved and it has become an operational agency sending many experts to first-entry countries (Italy, Greece, Cyprus and Malta). In 2012, one

² An expression which refers to the movements of migrants, including refugees and asylum seekers, who for different reasons move from the country in which they first arrived to seek protection or permanent resettlement elsewhere.

year after its creation, the EASO gathered 40 agents. Today, 600 agents are on the ground and 300 at the headquarters in Malta. The asylum claims system should be clarified and a real system of relocation set up.

But the attempts to manage the migratory flows, notably through the EU-Turkey Agreement of March 2016, have been criticised as it has offered to the Turkish President the possibility of blackmailing the EU (following in that way Qaddafi who was also regularly threatening Europe of letting the migrants present on Libyan territory leave for Europe).

Conclusion and perspectives

In order to reform the Dublin Regulations, a consensus seems to have been found on four solutions:

1. The need of a better use of the accelerated procedures.
2. The importance of supporting first-entry countries in order notably to prevent secondary movements.
3. The aim of setting up a global partnership with the origin and transit countries.
4. To necessity of a control at the borders thanks to the renewed mandate of the European Border and Coast Guard Agency (Frontex).

In practice, thanks to this debate, some key points have arisen:

1. The necessity of transforming the Dublin Regulation on a distribution tool as Dublin revealed its failure having only identified the responsibility of the first-entry countries. The German guideline issued in October during the G-6, could be part of a solution, as they proposed to examine the asylum claims at the EU borders and to reallocate the asylum seekers in different member states.
2. No progress can be made without a legal basis, in particular regarding relocation. Disembarkations *ad hoc* solutions³ have revealed their failures. The Valetta Agreement signed in September between only 5 EU countries should be joined by other member states. In 2019, more than a thousand people have been relocated after having applied for asylum in Italy and Malta. But, disembarkation plans have to be set on a long-term legal basis and not be negotiated between heads of State *ad hoc*. This is the only way to find a long-term solution, sustainable at a political and operational level.
3. After the failure of the proposal made at the Parliament in November which intended to address sea-rescue operations as mandatory, a European Citizens' Initiative is being launched. The idea is also to ban any "offence of solidarity" and to organise maritime and rescue operations at a European level⁴.

³ <http://confrontations.org/efrachonconfrontations-org/migrants-en-mediterranee-pour-la-fin-des-solutions-ad-hoc/>

⁴ As this has been the case in the past through notably Operation Sophia (European Union Naval Force Mediterranean (EU NAVFOR Med)) and then Operation Triton.